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# RFQ Summary

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Selected vendor(s) were notified

RFQ ID RFQ323516		Reference # FCC-RFQ08000049			
RFQ Title Fair Labor Standards Act (FLSA) - Expert/Consulting Services					
RFQ Status Open		Delivery Days Period of Performance 09/29/2008 through 09/28/2009			
RFQ Issue Date 09/17/2008 01:58:44 PM EDT		RFQ Close Date 09/22/2008 02:00:00 PM EDT			
Line Items					
Mfr. part No/NSN/Item	Manufacturer	Product/Service Name	Qty	Unit	Ship Address
FLSA Expert/Consultant		12-month Base Period	1	HR	1
FLSA Expert/Consultant		12-month Option Period-One	1	HR	1
FLSA Expert/Consultant		12-Month Option Period-Two	1	HR	1

## Description

The Federal Communications Commission (FCC) requires the services and expertise of a Contractor who has performed the following:

- 1) Successfully represented organizations in Fair Labor Standards Act (FLSA)Litigation, Arbitration or Settlement Discussions;
- 2) Knowledgeable of FLSA/Department of Labor regulations and FLSA Case Law;
- 3) Application of the FLSA Federal Regulations and Case Decisions to Accurately
- 4) Determine and Defend Decisions to 'Exempt' Federal Positions;
- 5) Determine agency risk based on an assessment of 'exempt' positions; and
- 6) Serve as Expert Witness on behalf of the Agency. Upon completion of performance and within 18 months, the contractor is expected to be able to serve in the capacity of expert witness either in meetings with NTEU or before a third party.

The experience for the above shall have been at the HQ level of Labor, OPM, federal agency or a law firm/contractor specializing in FLSA.

If the experience was gained at an agency level, the individual must have been considered their "Agency Lead" and expert in FLSA that included providing advice and guidance to lower organization units on the application and interpretation of FLSA. They should have been responsible for FLSA determinations within their agency including dealing with appeals or grievances. The individual must have served as the agency spokesperson and expert internally within their agency and externally before a third party. In addition, they must have written policy or guidance on the application of FLSA.

If the experience was gained at a law firm or as a consultant, they must have provided expert level services to agencies on responding challenges to FLSA determinations The FCC is seeking honest assessments, not finessed defenses. They should have served as an expert witness in FLSA cases, appeals and grievances before a third party. The individual should have experience working with Federal Agencies or defending/representing Federal Agencies regarding FLSA determinations including dealing with appeals or grievances. The individual may have written policy or guidance on the application of FLSA on behalf of an agency. SEE ATTACHED STATEMENT OF WORK

## Attached Documents:

RFQ SUBMISSION REQUIREMENTS - revised 09-17-2008 by C  
FLSA Expert SOW 09 17 2008 Revised by CO.doc  
Quotation Cover revised 09-17-2008 by CO.doc  
Past Performance Contact Information Sheet revised 09

**Shipping Address****(1) Arnett Rogiers:**

Federal Communications Commission  
CONTRACTS & PURCHASING CENTER  
445 12TH STREET SW, ROOM # 1-A522  
Washington, DC 20554

*Individual Receiving Shipment*  
ARNETT ROGIER  
202-418-1973  
ARNETT.ROGIER@FCC.GOV

**Fair Labor Standard Act (FLSA) – Expert/Consulting Services****RFQ SUBMISSION REQUIREMENTS**

The technical quote **shall not exceed twenty (20) pages**, excluding table of contents, cover sheet, resumes, price information and past performance attachment. A page is defined as one side of an 8½" x 11" sheet of white, un-textured paper, single-spaced, with at least one inch margins on all sides, using not smaller than 12 characters per linear inch or be smaller than twelve (12) point, font and shall not exceed six (6) lines per vertical inch. However, any charts, graphics and/or past performance information sheets may be in 10 point font. Information may be submitted on single or double-sided sheets, but shall not exceed this page limitation.

The quote shall be provided electronically, (via electronic mail attachment) and formatted for personal computers using Microsoft software and or Acrobat. **Offerors shall complete and submit the Quotation Cover Page and the Past Performance Contact Information Sheet.**

Evaluation Methodology: Source Selection will be based on best value. All non-price factors are significantly more important than price.

Evaluation Criteria:

**Factor 1 – Technical Capability****Sub-factor 1A - Understanding the Requirement(s): (Not-to-Exceed 10-pages)**

Describe your firm's technical capability to serve as the FCC FLSA expert/consultant and successfully represent the FCC in challenges against their Fair Labor Standards Act (FLSA) determinations. Explain your staff background and experience in FLSA Litigation, Arbitration or Settlement Discussions. Describe the staff's knowledge of FLSA/Department of Labor regulations and FLSA Case Law and the application of the FLSA, Federal Regulations and Case Decisions to Accurately Determine and Defend Decisions to "Exempt" Federal Positions. Describe the firm's background and credential in serving as an Expert Witness on behalf of the Agency.

**Sub-factor 1B – Serving as FLSA Expert: (Not-to-Exceed 5-pages; excluding resumes)**

Describe the individual expertise of the candidate being proposed to performed duties in the PWS as outlined in the following descriptions:

1. At an agency level the individual must have been considered their "Agency Lead" and expert in FLSA that included providing advice and guidance to lower organization units on the application and interpretation of FLSA. They should have been responsible for FLSA determinations within their agency including dealing with appeals or grievances. The individual must have served as the agency spokesperson and expert internally within their agency and externally before a third party. In addition, they may have written policy or guidance on the application of FLSA.

**Fair Labor Standard Act (FLSA) – Expert/Consulting Services**

2. If the experience was gained at a law firm or as a consultant, they must have provided expert level services to agencies (i.e., federal, state or local municipalities) on upholding challenges to FLSA determinations. They should have served as an expert witness in FLSA cases, appeals and grievances before a third party. The individual should have experience working with Federal Agencies or defending Federal Agencies regarding FLSA determinations including dealing with appeals or grievances. The individual should have written policy or guidance on the application of FLSA on behalf of an agency.

**This requirement is designated for an “individual” not a team concept. As such, offerors shall only provide resumes for the individual expected to perform work proposed. The resume shall describe the professional qualifications and experience with respect to:**

- **Position and years in the profession;**
- **Experience relevant to the Performance-based Work Statement (PWS);**
- **education; and,**
- **Professional accomplishments.**

**Factor 2 – Past Performance**

Using the Past Performance Contact Information Sheet, list up to three (3) comparable efforts performed during the last three years. The Government may also consider information obtained through other sources. Past performance information will be utilized to determine the quality of the contractor's past performance.

**Factor 3 – Price**

The price quotes will be evaluated separately. This is a Time and Material. Proposed quotes shall include the fully loaded hourly rates of all applicable labor categories. The labor categories shall accompany a (brief narrative) description of the skills and experience per category. If you are a GSA schedule holder, your price quote shall be based on your current GSA Schedule contract. **Offerors are highly encouraged to discount their labor rates.**

**Statement of Work  
For  
Fair Labor Standard Act (FLSA) – Expert/Consulting Services**

**1.0 INTRODUCTION**

The Federal Communications Commission (FCC) is an independent agency established by Congress in the Communications Act of 1934, as amended, to regulate all non-Governmental interstate and nationwide wire and radio communications services at a reasonable charge and promote safety of life and property.

**2.0 BACKGROUND**

The National Office of the National Treasury Employees Union (NTEU) has filed a Chapter Grievance with the FCC alleging multiple violations of the Fair Labor Standards Act (FLSA) over exempted bargaining unit employee positions. In preparing a response to the grievance, the FCC needs to review and to assess the validity of the FLSA exemption status of the grieved positions.

**3.0 SCOPE**

The FCC requires the services and expertise of a Contractor who has in the following:

- 1) Successfully represented organizations in Fair Labor Standards Act (FLSA) Litigation, Arbitration or Settlement Discussions;
- 2) Knowledgeable of FLSA/Department of Labor regulations and FLSA Case Law;
- 3) Application of the FLSA Federal Regulations and Case Decisions to Accurately
- 4) Determine and Defend Decisions to 'Exempt' Federal Positions;
- 5) Determine agency risk based on an assessment of 'exempt' positions; and
- 6) Serve as Expert Witness on behalf of the Agency. Upon completion of performance and within 18 months, the contractor is expected to be able to serve in the capacity of expert witness either in meetings with NTEU or before a third party.

The experience for the above shall have been at the HQ level of Labor, OPM, federal agency or a law firm/contractor specializing in FLSA.

If the experience was gained at an agency level, the individual must have been considered their "Agency Lead" and expert in FLSA that included providing advice and guidance to lower organization units on the application and interpretation of FLSA. They should have been responsible for FLSA determinations within their agency including dealing with appeals or grievances. The individual must have served as the agency

spokesperson and expert internally within their agency and externally before a third party. In addition, they must have written policy or guidance on the application of FLSA.

If the experience was gained at a law firm or as a consultant, they must have provided expert level services to agencies on responding challenges to FLSA determinations. The FCC is seeking honest assessments, not finessed defenses. They should have served as an expert witness in FLSA cases, appeals and grievances before a third party. The individual should have experience working with Federal Agencies or defending/representing Federal Agencies regarding FLSA determinations including dealing with appeals or grievances. The individual may have written policy or guidance on the application of FLSA on behalf of an agency.

#### **4.0 REQUIREMENTS**

- 1) The contractor shall have expert knowledge of the Fair Labor Standards Act, 29 U.S.C. chapter 8 (sections 201-219,) as it applies to U.S. Government employment. The contractor shall also have expert knowledge of the U.S. Office of Personnel Management's (OPM) FLSA regulations published in part 551 of title 5, Code of Federal Regulations (CFR.) The contractor shall have experience reviewing the duties performed by Federal employees and making exemption determinations in compliance with the exemption criteria in the FLSA, CFR, and supplemental guidance issued by OPM. The contractor shall have current knowledge of arbitration and court decisions in Federal service FLSA litigation.
- 2) Gain an understanding of the Commission's FLSA application practices and an understanding of the occupations currently in question as part of the NTEU grievance by reading a sampling of the positions descriptions (PDs) for the grieved positions and discussions with Human Resources staff, managers and/or incumbents;
- 3) Make a FLSA exemption determination, correctly applying FLSA and OPM exemption criteria, for Federal positions based on a review of position descriptions and discussions with managers and incumbents;
- 4) Prepare a written report providing the results of each position description's FLSA exemption determination, the analysis conducted and the justification for each determination; and
- 5) Prepare a written report that identifies the potential risk or concerns with current FLSA determinations based on possible inappropriate FLSA determinations. The report will assess the potential financial risk and provide options for the agencies to consider relating to the NTEU grievance. The risks and options will be based on FLSA exemption determinations made and knowledge of how like grievances have been decided before arbitrators and the courts.

## 5.0 DELIVERABLES

During the performance of the contract, the contractor shall deliver the following:

- After discussion with the FCC HR Office, the contractor will prepare a project plan detailing the strategy, approach, and the specific steps to be taken to accomplish the tasks described in this Statement of Work. The plan will be delivered to the COTR within 10 business days of contract execution. The plan shall include milestones, their estimated completion date, and a final project completion date. The work plan shall be submitted to the (COTR) for review and approval.
- A weekly status report shall be submitted to the COTR no later than Thursday of each week commencing on the third Thursday after contract execution. The report should include current status, a comparison of actual accomplishments with planned, milestones reached, any deviation from schedule, and the percentage of project completion. A narrative identifying potential findings and any factors that might, or are, adversely affecting the timeliness or quality of work should also be included. The contractor should consult with the COTR on the format of the report.
- The contractor will meet with the COTR as requested by the COTR.
- A draft, written report on the results of PDs' reviewed shall be provided. The report shall include an executive summary and detailed information on specific findings. The report will describe the PDs reviewed and the assessment of the validity of the FLSA exemption status of the grievated positions. The draft report shall be referenced to supporting work papers submitted with the draft report. The draft report and supporting work papers will be delivered to the COTR who will review them and determine whether or not they are acceptable. The due date for the draft report will be established in the project plan accepted by the COTR.
- A final, written report that incorporates written responses to the draft report and any necessary revisions and that is referenced to supporting work papers shall also be delivered to the COTR. The final report shall be delivered within 20 business days of the receipt of a written management response to the draft report or, in the absence of such timely comments, the date the COTR directs the contractor to proceed with the final report.
- A draft, written report providing ranked assessment of the FCC's grievance response options, with risks, in view of FLSA exemption determinations made and knowledge of how like grievances have been decided before arbitrators and the courts. The report will also include potential financial risk.

- The report shall include an executive summary and detailed information on specific findings. The draft report shall be referenced to supporting work papers submitted with the draft report. The draft report and supporting work papers will be delivered to the COTR who will review them and determine whether or not they are acceptable. The due date for the draft report will be established in the project plan accepted by the COTR.
- A final, written report providing ranked assessment of the FCC's grievance response options, with risks, in view of FLSA exemption determinations made and knowledge of how like grievances have been decided before arbitrators and the courts. The report will also include potential financial risk. The final written report incorporates written responses to the draft report and any necessary revisions and that is referenced to supporting work papers shall also be delivered to the COTR. The final report shall be delivered within 20 business days of the receipt of a written management response to the draft report or, in the absence of such timely comments, the date the COTR directs the contractor to proceed with the final report.
- Work papers that document all work performed shall be submitted to the COTR with the draft reports. The contractor is responsible for preparing, reviewing, and indexing work papers. The work papers shall reflect the collection of sufficient, relevant, competent evidence for conclusions reached and opinions developed.
- Access to work papers shall be provided to the COTR at any time during contract performance for interim reviews and quality checks by the COTR.
- In summary and as explained above, the contractor shall provide the following deliverables:
  - 1) A project plan.
  - 2) Weekly status reports.
  - 3) Meetings with the COTR if requested.
  - 4) A draft report on the results of PDs' reviewed referenced to supporting work papers.
  - 5) A final report on the results of PDs' reviewed referenced to supporting work papers.
  - 6) A draft report of the FCC's grievance response options, with risks, in view of FLSA exemption determinations made and knowledge of how like grievances have been decided before arbitrators and the courts.
  - 7) A final report of the FCC's grievance response options, with risks, in view of FLSA exemption determinations made and knowledge of how like grievances have been decided before arbitrators and the courts.
  - 8) Work papers documenting the work performed.

The Contractor shall provide deliverables to the Gary McLean at 445 12<sup>th</sup> Street, SW, Room 6C-312, Washington, DC 20554. The COTR will review each deliverable and provide comments to the Contractor within 15 business days unless otherwise negotiated.



The Contractor shall incorporate these comments and return to the COTR within 10 business days of receipt unless otherwise negotiated.

All deliverables, including work papers, shall become the property of the Office of Managing Director, Federal Communications Commission, and shall not be released to any party outside the Commission without the permission of a senior member of the FCC OMD staff. Each deliverable shall be submitted in "hard copy" and in an electronic format.

If any deliverables or material obtained during contract performance is classified as "Non Public – for Internal Use Only," the contractor will not release any item so classified to any person or entity outside the FCC without the written permission of a senior member of the FCC OMD staff.

During the course of contract performance, any potential fraud, waste, or abuse discovered by the contractor shall immediately be reported to the COTR.

## **6.0 PERIOD OF PERFORMANCE**

The period of performance shall be effective for a base year and two (2) additional one (1) year option based on the date of contract award (based upon an anticipated award date of September 30, 2008).

## **7.0 DESIGNATION OF CONTRACTING OFFICER TECHNICAL REPRESENTATIVE**

The Contracting Officer's Technical Representative (COTR) will be appointed. The COTR is responsible for oversight, monitoring day-to-day progress, and providing a liaison to support personnel in the FCC. In no event shall any understanding, agreement, modification, change order or other matter deviating from the terms and conditions of the contract be effective or binding upon the FCC unless authorized by a modification document executed by the Contracting Officer prior to completion of the contract.

The Contracting Officer shall be informed as soon as possible of any actions or inactions by the Contractor or the FCC which may affect the required delivery, completion times, or price stated in this contract so that the contract may be modified if necessary. The COTR is not authorized to direct any action that results in a change in scope, price, terms, or conditions of the contract.

## **8.0 ORGANIZATIONAL CONFLICT OF INTEREST**

8.1 The provisions of FAR 9.5, titled Organizational and Consultant Conflicts of Interest, govern performance under this contract. As stated at FAR 9.502(c), an organizational conflict of interest may result when factors create an actual or potential conflict of interest under this contract, or when the nature of the work to be performed under this contract creates an actual or potential conflict of interest

on a future acquisition. In the latter case, some restrictions on the future activities of the contractor may be imposed by the Contracting Officer for the future acquisition.

8.2 FAR 9.505 states that the two underlying principles are – (a) preventing the existence of conflicting roles that might bias a contractor's judgment; and (b) preventing unfair competitive advantage. It further states that organizational conflicts of interest may arise in situations covered by FAR 9.505, or the examples in FAR 9.508, or in situations not covered by those provisions.

8.3 Under this contract, the contractor may be required to perform services that trigger the concerns and restrictions described in FAR 9.5. Two examples of such situations and related restrictions applicable to performance hereunder, are set forth below.

8.3.1 Under this contract, the contractor may be required to evaluate offers for products or services. The contractor agrees that it will neither evaluate, nor advise the Government with regard to, its own products or services. In addition, the contractor agrees that it will objectively evaluate, and advise the Government concerning, the products or services of its actual or prospective competitors.

8.3.2 In addition, under this contract, the contractor may obtain access to nonpublic information, such as information proprietary to other companies, and information generated by the Government and not intended for release outside the Government. As a result of access to such information, the contractor may gain an unfair competitive advantage, with respect to a future acquisition, unless restrictions are imposed. Paragraph 9.0, titled Nondisclosure, imposes use and disclosure restrictions on the contractor. However, as indicated above, only the Contracting Officer for the future acquisitions has the authority to determine whether the contractor will be allowed to participate in the future acquisitions, and if so, the extent of that participation.

## **9.0 PERSONAL CONFLICTS OF INTEREST**

In the course of performance pursuant to this contract, contractor employees will be performing duties that have a direct and predictable effect upon non-Federal entities, such as contractors for other FCC contracts. Contractor agrees to use its best efforts to ensure that such employees and others performing services under this contract avoid conflicts of interest or the appearance thereof. To that end, Contractor agrees that its employees and others performing services under this contract will sign the Certificate of No Conflict of Interest for each contract (to include each delivery order/task order/project) they work with.

## 10.0 NONDISCLOSURE

In the course of performance pursuant to this task order, the contractor will access nonpublic information, including acquisition sensitive information. The contractor agrees that it will not use or disclose any such information unless authorized by the Contracting Officer. The contractor further agrees that it will use its best efforts to ensure that its employees and others performing services under this contract will not use or disclose any such information unless authorized by the Contracting Officer. To that end, contractor agrees that its employees and others performing duties under this contract will sign the Certificate of Nondisclosure for each contract (to include each delivery order/task order/project) they work with.

## 11.0 SUBMISSION OF INVOICES

A separate invoice for each month of services shall be submitted in an original and two copies to the:

Federal Communications Commission  
Accounts Processing Branch  
Washington, DC 20554

Invoices shall be electronically submitted by the 10<sup>th</sup> of every month for the preceding month to **THE FCC Travel/Operations Group, Room #1A761, 445 12<sup>th</sup> Street, SW., Washington, DC 20554**. To constitute a proper invoice, the invoice must include the following information and/or attached documentation:

- (1) Name of the business concern, invoice number and invoice date,
  - (2) Contract number, or authorization for delivery of property or performance of services,
  - (3) Description, price, and quantity of property and services actually delivered or rendered,
  - (4) Shipping and payment terms,
  - (5) Name (where practicable), title, phone number, and complete mailing address of responsible official to whom payment is to be sent,
  - (6) Other substantiating documentation or information as required by the contract, and
  - (7) Receipts to support all out-of-pocket expenses incurred by the Contractor.
- (1) Invoices shall be submitted via email to: **FO-Einvoices@fcc.gov** . **In addition, copies of the emailed invoices shall also be sent to the CO and COTR.** The address is as follows: FCC Travel/ Operations Group, Room #1A761, 445 12<sup>th</sup> Street, S.W., Washington, DC 20554.

The invoice shall contain a statement signed by a responsible official of the concern substantially similar if not identical to the following:

"I certify that the items above have been delivered in accordance with the contract, and that all charges are true, correct, and have not been previously billed."

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Vendor's Signature

The FCC shall return all improper invoices without action.

(2) Interest on Overdue Payment

Determination of interest due shall be made in accordance with the provisions of the Prompt Payment Act and Office of Management and Budget Circular A-125.

(3) Payment due date:

(a) Unless otherwise specified in the contract, payments under this task order shall be made:

- i) on the 30<sup>th</sup> calendar day after the later of the date of actual receipt of a proper invoice in the office designated to receive the invoice, or
- ii) the date tasks are formally accepted by the FCC.

(b) If the services covered by a submitted invoice are rejected for failure to conform to the technical requirements of this contract, the provisions stated above shall (i and ii) apply to the properly resubmitted document.

In addition, one courtesy copy shall be sent to each COTR.

1. In addition to the items required in the Contract Clause, entitled PROMPT PAYMENT (FAR 52.232-25) Mar 2003, a proper invoice must include the following minimum information and/or attached documentation.

- a. Separate, distinct invoice number
- b. Description of services and date upon which services were rendered;
- c. Total/cumulative charges for the billing period;

2. Interest on Overdue Payment

- a. The Prompt Payment Act, Public Law 97-177 (96 Stat. 85, 31 USC 1801) is applicable to payments under this contract, and requires that payment to contractors of interest on overdue payments and improperly taken discounts.
- b. Determination of interest due will be made in accordance with the provisions of the Prompt Payment Act.

**12.0 POST AWARD CONFERENCE**

The contractor shall be required to attend a post-award conference to be held within five (5) business days after contract award. The conference will be held at the FCC headquarters and the COTR will notify the contractor of the applicable date, time and room number where the conference will be held.

**Fair Labor Standard Act (FLSA) – Expert/Consulting Services**

**Quotation Cover Page**

**Company Name:**

**Name, Title, Email Address and Phone Number of Company Representative for GSA Orders:**

**Payment Terms:**

**GSA Schedule Number and expiration date:**

**Please check business size: ( ) Large ( ) Small ( ) Minority ( ) Women-owned**

**TIN:**

**DUNS:**

**NAICS:**

**Product Service Code (PSC):**

**Complete Mailing Address:**

**Other Pertinent Information:**

**Offer Acceptance Period (no less than 60 days from due date of proposal):**

**Name, Title, Email Address and Phone Number of Person Authorized to Sign Offer:**

**Signature:**

**Date:**

**Fair Labor Standard Act (FLSA) – Expert/Consulting Services****PAST PERFORMANCE CONTACT INFORMATION SHEET****Offeror Information:**

Name of Offeror Providing Services: \_\_\_\_\_

Address: \_\_\_\_\_

**Past Performance Reference Information:**Name of Company/Organization Receiving  
Services: \_\_\_\_\_

Point-of-Contact (i.e., Contracting Officer; COTR; Business Manager; etc)

\_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_ FAX: \_\_\_\_\_

**Contract Information:**

Contract Number: \_\_\_\_\_ Dollar Value (Annual): \_\_\_\_\_

Performance Period: \_\_\_\_\_ Performance Location: \_\_\_\_\_

Type of Contract (Check all that apply):

Fixed Price \_\_\_\_\_ Cost Reimbursement \_\_\_\_\_ Other (specify) \_\_\_\_\_

Negotiated \_\_\_\_\_ Sealed Bid \_\_\_\_\_ Competitive \_\_\_\_\_ Non-Competitive \_\_\_\_\_

Basis of Payment:

Labor/Equipment Hours \_\_\_\_\_ Other (specify) \_\_\_\_\_

Type &amp; Extent of Subcontracting: \_\_\_\_\_

Description of Services Provided: \_\_\_\_\_

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